

NATURAL RESOURCES CODE
CHAPTER 152. FOREST PEST CONTROL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. POLICY. It is the public policy of the State of Texas to control forest pests in or threatening forests in this state in order to protect forest resources, enhance the growth and maintenance of forests, promote stability of forest-using industries, protect recreational wildlife uses, and conserve other values of the forest.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.002. PUBLIC NUISANCE. Forest pests are declared to be a public nuisance.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.003. DEFINITIONS. In this chapter:

(1) "Service" means the Texas Forest Service.

(2) "Forest pests" means insects and diseases that are harmful, injurious, or destructive to forests and whose damage, if uncontrolled, is of considerable economic importance, and includes:

(A) pine bark beetles of the genera *Dendroctonus*, *Ips*, *Pissodes*, and *Hyllobius*;

(B) sawflies of the genus *Neodiprion*;

(C) defoliators in the genera *Datana*, *Malacosoma*, *Hyphantria*, *Diapheromera*, and *Galerucella*;

(D) pine shoot moth of the genus *Rhyacionia*;

(E) wilt of the genus *Chalora*; and

(F) rots of the genera *Fomes* and *Polyporus*.

(3) "Forest land" means land on which the trees are potentially valuable for timber products, protection of watersheds, wildlife habitat, recreational uses, or for other purposes, but does not include land within the incorporated limits of a village, town, or city.

(4) "Forest" means the standing trees on forest land.

(5) "Control" means prevent, retard, suppress, eradicate, or destroy.

(6) "Infestation" means actual infestation or infection at conditions beyond normal proportion causing abnormal epidemic loss to present or future commercial timber supply or both.

(7) "Landowner" and "owner" mean a person who owns forest land or has forest land under his direction irrespective of ownership.

(8) "Forest owner" means a person who owns the standing trees on forest land, either by a present right or by a future right under the terms of a valid existing contract.

(9) "Tract" means all contiguous land in common ownership.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POWERS AND DUTIES OF THE TEXAS FOREST SERVICE

Sec. 152.011. IN GENERAL. The Texas Forest Service shall administer the provisions of this chapter and make all relevant determinations.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.012. SURVEYS AND INVESTIGATIONS. (a) The service shall make surveys and investigations to determine the existence of infestations of forest pests and means practical for their control by landowners.

(b) Duly delegated representatives of the service may enter private land and public land, including that held by the United States if permission is obtained, for the purpose of conducting surveys and investigations.

(c) All the service's information shall be available to all interested landowners.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.013. DETERMINATION OF AREA CONTROL MEASURES. If the service finds an infestation existent or threatened in the state, it shall determine:

(1) when control measures are needed;

(2) the nature of the control measures;

(3) availability of control measures; and

(4) the techniques by which the control measures shall be applied.
Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.014. NOTICE OF FINDING OF INFESTATION. After determining that an infestation exists, the service shall give notice of the fact by:

(1) placing a notice in a newspaper or newspapers in the county or counties in which any infested land is located, or, if there is no newspaper in the county, placing a notice in a newspaper or newspapers with general circulation in the county or counties in which any infested land is located, stating its findings and setting a time and place for a hearing on the need for the control of the pest, to be held not less than 10 days from the date of the notice;

(2) mailing copies of the notice to owners of forest land known to the service to have holdings in the affected area; and

(3) arranging for publicity on the subject by all news media serving the affected area.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.015. HEARING. At the hearing, the agent of the service who presides shall:

(1) describe the conditions that have been found;

(2) explain the measures needed to control the pest infestation;

(3) hear all suggestions and protests; and

(4) record the proceedings.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.016. PROCEDURES FOR CONTROL. (a) As soon as practicable after the hearing, the service shall promulgate procedures to be followed for the control of the infestation and shall:

(1) mail a copy to all appearing at the hearing and to all to whom notices were originally sent; and

(2) publish a copy in a newspaper circulated in the affected area in the same manner as publication of preliminary notice.

(b) Publication as provided in Subsection (a) of this section is notice to each landowner and each tract of land in the affected area on the date of publication.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.017. SPECIFIC CONTROL MEASURES. If the provisions of Sections 152.013 through 152.016 of this code have not been applied and control measures are needed to check the spread of the forest pests on forest land owned or controlled by any person, written notice, signed by a duly authorized representative of the service whose mailing address is shown on the notice, shall be given to the person owning or controlling the forest land.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.018. NOTICE TO SPECIFIC LANDOWNER. (a) The notice required by Section 152.017 of this code shall inform the landowner of:

(1) the facts found to exist;

(2) his responsibilities for the control measures;

(3) the control technique recommended;

(4) the law under which control must be accomplished;

and

(5) the authority of the service in the event the landowner takes no action toward controlling the pest.

(b) The notice may be given by:

(1) personal service on the landowner or on the person having control of the forest land;

(2) registered or certified mail directed to the landowner or person having control of the forest land at his last known address; or

(3) if the person or his address is unknown, publication in one issue of a newspaper of general circulation in the county in which the land is located.

(c) A published notice under Subsection (b) of this section shall include the information specified in Subsection (a) of this

section, state the name of the owner, if known, and briefly describe the land to which the notice applies.

(d) No other notice is necessary under the provisions of this chapter.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.019. NOTICE TO FOREST OWNER. If the landowner has given notice to the service of an interest in the forest on his land owned by another, as provided for in Section 152.064 of this code, the service shall furnish the same information to the forest owner that it is required by the provisions of this chapter to give to the landowner.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.020. SUPERVISION. (a) The service shall keep informed of what is done by the landowner to take measures to control the infestation and the result of it.

(b) The service may change its prescribed procedures as conditions or new information may require.

(c) On request, the service shall certify when all reasonably practicable measures to be done by the landowner, pursuant to its prescribed procedures, have been completed.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.021. CONTROL MEASURES APPLIED BY FOREST SERVICE. If pest control measures prescribed by the service are not applied by the landowner or any other person within 10 days from the time notice is given as provided in this chapter, exclusive of the date the notice is given, representatives of the service shall enter the land and have the forest pests controlled or destroyed.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.022. EXPENSE OF CONTROL MEASURES TAKEN BY SERVICE. (a) Except as provided in Subsection (b) of this section, all charges and expenses of destruction or control measures taken by the service shall be paid by the owner of the land on which the infestation occurred.

(b) If the tract with respect to which the service conducted control measures contains 50 acres of forest land or less and the landowner in whose name the record title to the land stands owns no more than 50 acres of forest land in the county in which the infestation occurred, the cost of control shall be borne by the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.023. CLAIM AGAINST LANDOWNER. If control is undertaken by the service, the cost, not to exceed \$10 for each infested acre or part of an acre on which control measures have been employed, constitutes a legal claim against the landowner, but does not constitute a lien on any land owned by the landowner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.024. SUIT. The attorney general may bring suit on behalf of the service in the county in which the infestation occurred to recover the claim against the landowner, together with all costs incurred in the suit.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.025. LANDOWNER REIMBURSEMENT. If the landowner has given the service notice of an interest owned by another in the forest on his land and the landowner has made expenditures for pest control purposes as provided in Section 152.062 of this code, or has paid a legal claim against him under the provisions of Sections 152.022 through 152.024 of this code, the landowner is entitled to a reasonable reimbursement for the expenses from the forest owner. The reimbursement shall be proportional to the interest owned in the forest by the forest owner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.026. COOPERATIVE AGREEMENTS. The service may enter into cooperative agreements with private landowners or forest owners, the federal government, or other public or private agencies to accomplish the control of forest pests.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. POWERS AND DUTIES OF THE LANDOWNER

Sec. 152.061. GENERAL DUTY OF LANDOWNER. Each owner of forest land shall control the forest pests on land owned by him or under his direction as provided in this chapter.
Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.062. DUTY TO APPLY CONTROL MEASURES. Within 10 days after notice is given as provided in Section 152.014 or 152.018 of this code, exclusive of the date the notice is given, each affected landowner shall commence diligently to take measures to control the infestation as prescribed and continue this activity with all practical expedition and efficiency under the direction of the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.063. REPORTS AND CONSULTATION WITH SERVICE. (a) The landowner shall notify the service of his actions and the result of his actions.

(b) The landowner may report to and consult with a representative of the service as often as necessary.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.064. NOTIFYING SERVICE OF FOREST OWNER. If all or part of the standing trees are owned by someone other than the landowner, either by a present right or by a future right under the terms of a valid existing contract, the landowner shall notify the service of that fact and furnish the names and addresses of the forest owner within 10 days after receiving the notice from the service as provided for in Section 152.014 or 152.018 of this code.
Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. JUDICIAL REVIEW

Sec. 152.101. JUDICIAL REVIEW OF SERVICE NOTICE. A landowner or person having control of forest land who is aggrieved by the notice given by the service is entitled to seek relief but only if the proceedings to obtain the relief are initiated within 10 days from the time notice is given, exclusive of the date the notice is given.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.102. VENUE. The proceeding to obtain relief shall be in the district court of the county in which the land is located.
Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.103. CONTROL MEASURES PENDING LITIGATION. The service shall not proceed with any control measures while the litigation is pending unless permission to do so is given by the court on a showing of probable harm due to a delay in using the control measures.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.105. INJUNCTIVE RELIEF FOR LANDOWNER. If the final judgment in an action seeking relief from a notice is in favor of the landowner, the landowner may be entitled to injunctive relief against the use of any control measures on his forest land by the service until such time as the court may determine.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.106. NOTICE FINAL. If the final judgment is against the landowner, or if the landowner fails to seek relief in the district court of the county in which the land is located, the notice from the service is final, and the service shall summarily take the measures necessary to control the infestation.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.